of *Mat* v *Inspector-General of Police, Malaysia & Anor*[13] in which the then Federal Court adopted the dictum of Wancho J in *Godavari* v *State of Maharashtra*.[14] In that case a person was detained by an order of the Police Commissioner. The order was sent to the state government for approval as required by the Preventive Detention Act. The state government revoked the order of the Police Commissioner and on the same day passed an order under r 30 of the Defence of India Rules. The latter order was served on the detainee in gaol. The legality of the order was challenged on the ground that it was served while the detainee was in gaol. The Supreme Court held that the order was legal. Wancho J (as he then was) delivering the judgment of the court at p 1132 said:

> In these circumstances it would be in our opinion an empty formality to allow the appellants to go out of jail on the revocation of the order (made by the Commissioner) and to serve them with the order (made by the state government) as soon as they were out of jail.

For the reasons above-stated I cannot find for the applicants. Accordingly the applications are dismissed.

Applications dismissed.

Solicitors: *Kam Woon Wah & Co; Shan & Gooi.*

Reported by *Zarinah Marican*

Wong Ah Kau v Menteri Hal Ehwal Dalam Negeri & Anor and other applications

HIGH COURT (PENANG) — CRIMINAL APPLICATION NOS 44-69-89, 44-75-89, 44-2-90, 44-8-90 AND 44-5-90
MOHAMED DZAIDDIN J
7 MARCH 1990

Preventive Detention — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Fresh order — Whether minister has power to make fresh order after revocation order is made under s 11B(1) — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 6(1), 11B(1) & (2)

The applicant was detained under a detention order made under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') for a period of two years commencing from 5 June 1987. On the expiry of this order, the applicant was detained for another two years under s 11(A)(1). The extension order would have expired on 3 June 1991, but on 15 January 1990, the deputy minister revoked this order in the exercise of his powers under s 11B and simultaneously issued a fresh detention order under s 6(1) directing that he be detained for six months.

The applicant argued, inter alia, that the minister has no power to issue a fresh s 6 (1) order read together with s 11B of the Act.

Held, allowing the application:

(1) Section 11B(1) of the Act gives the minister the power to revoke any detention order made under s 6(1) at any time if he deems it just or fit to do so. Under s 11B(2), any revocation under sub-s (1) shall be without prejudice to the power of the minister to make a fresh order or to give a fresh direction under sub-s (1).

(2) However, sub-s (1) is silent about the power of the minister to make a fresh order or to give a fresh direction. There is a clear omission in sub-s (1) to provide for such a power of the minister as spelt out in sub-s (2). There are no other sections in the Act which gives power to the minister to make a fresh order under s 11A(1).

(3) Even taking sub-ss (1) and (2) together, sub-s (2) cannot be interpreted to fill in the omission regarding the power of the minister in sub-s (1). Only Parliament can remedy this omission, and the court cannot fill in any gap in order to give effect to the intention of the statute.

(4) The minister therefore has no power to issue a fresh order of detention once a revocation order under s 11B(1) is made.

Legislation referred to
Dangerous Drugs (Special Preventive Measures) Act 1985 ss 6(1), 11B(1), (2)

Gooi Hock Seng (*M Athimulan* and *Tan Hock Chuan* with him) for the applicants.
Balia Yusof (Senior Federal Counsel) for the respondents.

Cur Adv Vult

Mohamed Dzaiddin J: These are five applications for writs of habeas corpus which are taken up in argument together under Criminal Application No 44-5-90 because they are based on the same and common grounds. Accordingly, the parties agreed to be bound by my decision in Criminal Application No 44-5-90.

The brief facts in this application are these. The applicant was first detained under the detention order made in pursuance of s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') signed and issued by the Timbalan Menteri Dalam Negeri on 4 June 1987 ordering his detention for a period of two years to commence from 5 June 1987. On the expiry of this order, the applicant was ordered to be detained for a further period of two years, which detention was made under s 11(A)(1). The said order was signed on 3 June 1989 directing his detention to run from 4 June 1989. Thus, in the normal course of events the extension order will not expire until 3 June 1991. In the meantime, on 15 January 1990, the deputy minister, in the exercise of his powers under s 11B, revoked this extension order and simultaneously issued a fresh detention order under s 6(1) against the applicant directing that he be detained for a period of six months. Now, to complete the facts, it is expedient for me to state here that according to Datuk Megat Junid (see his affidavit in lampiran 11), he was satisfied that a fresh order should be issued against the applicant and that before issuing the said order he applied his mind to the facts and the information relating to the applicant's case. He also took into consideration the applicant's conduct and the activities submitted by the police as well as the

report of the inquiry officer under s 5(4) of the Act. In the result, he was satisfied that it was necessary in the interest of public order for the applicant to be further detained.

Both Encik Gooi and Encik Tan had canvassed before me four grounds why in law the applicant should be set free. First, counsel submitted that the deputy minister has no power to issue a fresh s 6(1) order read together with s 11B of the Act.

Secondly, Encik Gooi submitted that assuming that the minister has such power under s 6(1) read together with s 11B(2), then he should have issued a fresh order under s 6(1). A fresh order means a new order which must adhere strictly to s 6(1)(a) and (b). On the facts, counsel submitted that no fresh investigation and inquiry were made.

Thirdly, even if the minister can issue the detention order under s 6(1) without fresh investigation and inquiry, the order was still invalid because the applicant was deprived of equal protection under the law contrary to art 8 of the Constitution.

Finally, counsel submitted that the order of the minister under s 11B(1) was bad because the minister could not revoke an order which was declared null and void by the court. On this issue, Encik Tan further submitted that s 11B must be construed strictly, otherwise the minister can have recourse to any illegality to prevent the release of a detainee. Counsel pointed out that there were no fresh facts to support the fresh order issued under s 6(1) read together with s 11B(2). Further, both the fresh order and the revocation order ran concurrently, which makes the fresh order invalid.

Encik Balia, in his reply, submitted that sub-ss (1) and (2) of s 11B must not be read disjunctively as sub-s (2) was introduced to supplement sub-s (1). There was no omission regarding the power of the minister to issue a revocation order. On the question of a fresh order requiring a fresh investigation and report of the inquiry officer, Encik Balia submitted that it only applied when a detainee had been released from detention. This was not the case here. The senior federal counsel further submitted that what was revoked was the extension order but the reports of investigation and that of the inquiry officer remained valid. In fact, he relied on the affidavit evidence of the deputy minister who deposed that a fresh order was necessary having regard to the reports submitted under s 6(1)(a) and (b).

After considering the submissions of counsel and examining the authorities, in my opinion, there is merit in Encik Gooi's submission on the first point.

Section 11B states:

> (1) Notwithstanding anything contained in this Act, the Minister may at any time revoke any detention order made under subsection (1) of section 6, or any restriction order made under subsection (3) of section 6, or any suspended detention order, or any direction under subsection (1) of section 11A for the extension of the duration of any such order, if he deems it just or fit to do so.
>
> (2) Any revocation under subsection (1) shall be without prejudice to the validity of the order or direction before its revocation or to anything done thereunder, or to the power of the Minister to make a fresh order or to give a fresh direction as is mentioned under subsection (1) in respect of the person against whom the order or direction which is revoked was made or given.

For the purpose of the present application, my reading of s 11B(1) is that, notwithstanding anything contained in the Act, the minister has the power to revoke any detention order made under s 6(1) at any time if he deems it just or fit to do so. This is followed by sub-s (2) which states that any revocation under sub-s (1) shall be without prejudice to the power of the minister to make a fresh order or to give a fresh direction as is mentioned under sub-s (1). It would seem to me that when we read back sub-s (1), it does not mention at all, indeed it is silent, about the power of the minister to make a fresh order or to give a fresh direction. In my opinion, there is a clear omission in sub-s (1) to provide such power of the minister, ie to make a fresh order or to give a fresh direction, which words are clearly spelt out in sub-s (2), and qualifying the said power by reference to sub-s (1). In addition, there are no other sections in the Act which gives power to the minister to make a fresh order or give a fresh direction under s 11A(1). Encik Balia has urged me to construe both subsections together and as a whole in order to get a proper meaning with respect to the power of the minister to make a fresh order or to give a fresh direction. Even taking them together, sub-s (2) cannot be interpreted to fill in the omission regarding the power of the minister in sub-s (1). In my opinion, this omission is the fault of the legislature. It is a fundamental principle of construction that where there is omission in the legislation, the court cannot repair it by filling in any gap in order to give effect to the intention of the statute. It is Parliament which can remedy it. Further, it is also a recognized rule that the law of preventive detention, which encroaches on the rights of the individual, must always be construed strictly, and if there is ambiguity, the construction in favour of the individual should be adopted.

Therefore, based on my above interpretation of s 11B(1) and (2) read together with s 6(1) of the Act, in my judgment, the minister has no power to issue a fresh order of detention once a revocation order under s 11B(1) is made. In the result, the continued detention of the applicant based on the order dated 15 January 1990 is illegal and a writ of habeas corpus should be issued forthwith. Likewise, the other applicants are forthwith released.

With regard to the remaining grounds submitted by counsel, I have considered them summarily and find no merit in the arguments.

Applications allowed.

Solicitors: *Shan & Gooi; Abdul Rahman Saad & Associates; Kam Woon Wah & Co.*

Reported by *Zarinah Marican*

Ng Kam Loon & Ors v Director of Public Works Department, Johore & Anor

HIGH COURT (JOHORE BAHRU) — ORIGINATING SUMMONS NO 31-371 OF 1986
RICHARD TALALLA JC
3 MARCH 1990

Land Law — Acquisition of land — Offer of compensation by Collector — Offer accepted by plaintiffs — 75% of compensation paid to plaintiffs — Director of Public Works filed objection — Collector referred matter to court for determination — Plaintiffs sought declaration that Director not entitled to object — Whether Director can object after offer accepted without protest — Whether Director an 'interested person' — Whether Collector agent of Director — Land Acquisition Act 1960, ss 12, 37(1) & (3)

The plaintiffs were the owners of the land lot 117 held under EMR 77, mukim of Tebrau, Johore Bahru. The state authority intended to acquire a part of the plaintiffs' said land. The appropriate steps were taken as required by the provisions of the Land Acquisition Act 1960 ('the Act'). Notices of award and offer of compensation were served on the plaintiffs. On 11 July 1982, the plaintiffs through their solicitors accepted the offer. In the event, the Collector (the second defendant) paid to the plaintiffs compensation of $306,750 representing 75% of the award, withholding 25% thereof. The first defendant (Director of Public Works Department, Johore) then filed an objection to the award and the Collector referred the matter to the court for determination. In this originating summons, the plaintiffs are seeking, inter alia, a declaration that the Director is not entitled to object to the award and the Collector must pay the full compensation he has offered.

The plaintiffs argued that there was no question of the Director being entitled to object or having the matter referred to court and that under s 44(2) of the Act, the court is required to consider the interest of all persons interested who have not accepted the award and that excluded them because they have accepted the award. It was further argued that the Collector is the agent of the Director.

Held, dismissing the plaintiffs' application:

(1) The court found that the total amount in respect of the land in question exceeded $15,000 and that the Director is a person undertaking a work which in the opinion of the state authority, to wit the Ruler of the State of Johore, is a public utility. Further, the person on whose behalf the land is acquired pursuant to the provisions of s 3 is the Director. That being the case, the Director is deemed to be a person interested in the land in question under the provisions of sub-s 1 of s 37 and therefore may make objections on any of the grounds specified in the subsection.

(2) It is implicit that the inquiry by the Collector into the value of the land and the assessment of the amount of compensation which in his opinion is appropriate, pursuant to the provisions of s 12, is a function the nature of which is judicial. The Collector is required to inquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the land in question, and into the objections, if any, by any interested person to the area of the land in question. Therefore it cannot be said that the relationship between the first and second defendants is one of principal and agent.

(3) Section 29A of the Act provides, inter alia, for 25% of the amount of any award exceeding $15,000 to be withheld until the amount of compensation is finally determined by the court under s 47 or the Federal Court (now the Supreme Court) or the Yang Di Pertuan Agong under s 49 and that if such final determination results in a reduction of the amount of compensation, the amount withheld or so much thereof as equals the amount of reduction, as the case may be, shall become free of all claims in respect of the compensation, and the remainder, if any, shall, as soon as may be, be paid to the person entitled thereto.

(4) The duty of the court is to consider the interest of the persons affected by the objection, including persons who have consented without protest to receive payment of compensation should there be any likelihood of the court reducing the amount of compensation. It is true that it is expressly provided in s 44(2) that the court shall consider the interest of all persons interested who have not accepted the award, whether those persons have themselves made any objection or not. That does not mean to say that the court is precluded from considering the interests of those who have consented without protest.

(5) The plaintiffs, having accepted without protest and consented to the Collector's offer, cannot now have their claim referred to the court. However, should there be a proper objection to the award, they are not precluded from defending the award and consequently the offer.

[*Editorial note*: The plaintiffs have appealed to the Supreme Court vide SCCA No 01-34 of 1990.]

Cases referred to

1 *Crown Brewery Mussoorie* v *Collector of Dehra Dun* ILR (1897)19 Allahabad 339 (refd)
2 *Setiausaha Tetap Kementerian Pelajaran* v *CLR, Butterworth* [1972] 2 MLJ 155 (refd)

Legislation referred to

Land Acquisition Act 1960 ss 12(2), 37(1), (3), 44 (1), (2), 45(2), 47, 49

Wong Kim Fatt (*Abdul Razak Ahmad* with him) for the plaintiffs.

Abdul Rahim bin Uda (Assistant State Legal Adviser) for the defendants.

Cur Adv Vult

Richard Talalla JC: The plaintiffs were the owners of the land held under EMR 77 lot 117, mukim of Tebrau, Johore Bahru. Pursuant to the provisions of s 3(b) of the